In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.30207 of 2012
and
Criminal Misc. No.A-378-MA of 2012

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Date of decision:01.10.2018

Ashok Sharma

...Applicant

v.

Sharad Shukla

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. J.B. Sharma, Advocate for the applicant.

Mr. Ravi Malik, Advocate for the respondent.

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Inderjit Singh, J.

Cr. Misc. No.30207 of 2012:

For the reasons mentioned in the criminal miscellaneous application, the delay of 9 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-378-MA of 2012:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Sharad Shukla for grant of leave to appeal against the impugned judgment dated 8.2.2012 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the Act') read with Section 420 IPC has been dismissed and the accused has been acquitted of the charges as framed against him.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been stated that the impugned judgment of acquittal is perverse, based on surmises and conjectures and thus the same is liable to be set aside. It has, therefore, been prayed that this application seeking leave to file appeal be allowed and leave be granted to the applicant to file appeal.

From the record, I find that Ashok Sharma-complainant filed complaint against Sharad Shukla under Section 138 of the Act read with Section 420 IPC. The allegations in the present case are that accused borrowed ₹4 Lakhs as friendly loan from the complainant and agreed to hand over a post-dated cheque to the complainant. Cheque bearing No.568144 dated 17.9.2008 amounting to ₹4 Lakhs was presented for encashment before the Bank which was returned with the remarks "insufficient funds" on 17.9.2008. It has also been stated in the complaint that intimation through memorandum was received by the complainant through his Bank on 17.9.2008. Thereafter, the complainant sent a legal notice dated 21.10.2008 through registered post to pay the amount of above stated cheque within 15 days. When the amount was not paid, the complaint was filed.

The learned Judicial Magistrate Ist Class, Gurgaon, vide the impugned judgment dated 8.2.2012 acquitted the accused. Aggrieved from the said judgment, the present appeal along with application seeking leave to file appeal has been filed by the complainant.

Notice of motion was issued in this case.

Mr. Ravi Malik, learned Advocate has appeared on behalf of the respondent and contested this application.

I have heard learned counsel for the applicant as well as learned counsel for the respondent and have gone through the record.

From the record, I find that in the complaint, the complainant has specifically stated that he received the intimation regarding the dishonour of cheque on 17.9.2008. As per the evidence vide his affidavit in examination-in-chief he also deposed that he received the intimation on 17.9.2008, but legal notice is dated 21.10.2008, which means the legal notice was not sent within 30 days after receiving the intimation regarding dishonour of the cheque. Furthermore, in cross-examination, the complainant stated and admitted that he had received information regarding dishonour of the cheque in question on 20.9.2008. Even if it is admitted that he received information on 20.9.2008, even then the legal notice was not given within 30 days. Therefore, one of the necessary ingredients was not proved by the complainant as per law.

Learned counsel for the complainant argued that he had produced CW-2 Abhilash Johney, Assistant Manager of Catholic Syrian Bank Ltd., who stated that cheque in question was received from OBC Bank on 19.9.2008 and intimation regarding the same was sent to the complainant on the outward cheque return register and information in this regard was also given to him on 22.9.2008, but the complainant himself has stated that he received intimation on 17.9.2008. CW-2 has further deposed that memo of cheque in question was prepared on 19.9.2008 and ordinary information to the customer was given on next day by telephone. CW-3 C.L. Kalra, Senior Manager, OBC Bank stated in cross-examination that it is admitted that the complainant had received information regarding dishonour of the cheque on 20.9.2008 on phone from Catholic Syrian Bank Ltd. A legal notice was sent to the accused on 21.10.2008 and postal date of the same is 21.10.2008. A perusal of the evidence shows that legal notice was not given within 30 days from receiving the information regarding dishonouring of the cheque.

Therefore, the learned Judicial Magistrate Ist Class, Gurgaon, after appreciating the evidence has rightly acquitted the accused. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

October 01, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No